S.B. CIVIL WRIT PETITION NO. 2544/2005.
(SMT. HEM KANWAR VS. STATE & ORS.)

DATE OF ORDER : 16.10.2006.

HON'BLE MR. GOVIND MATHUR, J.

Mr. Mukesh Rajpurohit for the petitioner/s.
Mr. B.L. Tiwari, Dy. GA, for the respondents.

The husband of the petitioner Shri Loon Singh was working in the Department of Forest as Beldar and while in service, he died on 02.092003. The petitioner thereafter submitted an application to the authority competent for her appointment as Class IV employee on compassionate grounds in accordance with the Rajasthan Recruitment of Dependents (Dying While in Service) Rules, 1996. As no vacancy at the relevant time was available in the Forest Department, the case of the petitioner was forwarded to be considered for appointment to the Secretary, Government of Rajasthan, Department of Personnel, Group II. The Department of Personnel in its turn by communication dated 03.08.2004 requested the Collector, Jaisalmer to consider the candidature of the petitioner for appointment on any of the post in pay scale No.1 to 9A. The Collector, Jaisalmer by communication dated 29.10.2004 requested the Chief Health and Medical Officer to employ the petitioner as Class IV employee against existing 9 vacant posts at Community Health Centre, Mohangarh.

The case of the petitioner for appointment at Community Health Centre, Jaisalmer came to be rejected by the Director (Administration), Medical and Health Services, Government of Rajasthan, Jaipur under a communication dated 05.03.2005 on the ground that in view of the notification No.7 (1) Personnel (Group-II) 95 dated 08.04.2003, no appointment under the Rules of 1996 could be given to a person having three children and the petitioner being mother of the three children, was not entitled to be employed as Class IV employee. Being aggrieved by the same, this petition for writ is preferred seeking a direction for respondents to appoint the petitioner as Class IV employee under the Rules of 1976.

A reply to the writ petition has been filed on behalf of the respondents stating therein that the Government of Rajasthan under the notification dated 08.04.2003 introduced an amendment in 104 service rules making prohibition for appointment on any of the post by a person having more than two children after 01.05.2002. According to the respondents, though the Rules of 1996 are not referred in the notification dated 08.04.2003 but as the appointment under the Rules of 1996 is required to be given against the vacancies pertaining to the direct recruitment, therefore, the petitioner being a mother

of three children, is not entitled to be recruited as Class IV employee.

Heard learned counsel for the parties.

The petitioner claimed appointment as Class IV employee being widow of a government servant and whatever right she claimed i.e. under the Rajasthan Recruitment of Dependents (Dying While in Service) Rules, 1996. It is true that under the Rules of 1996 an appointment is required to be made against the vacancies pertaining to the direct recruitment, however, the mode of recruitment under the other service rules is not applicable while making appointments under the Rules of 1996. The only criteria which is required to be adhered is eligibility required under the relevant service rules for making direct recruitment.

In the instant matter, the petitioner possessed requisite qualification to be appointed as Class IV employee, therefore, there is no impediment with respondents under the Rules of 1996 to appoint the petitioner as a Class IV employee. The prohibitory condition prescribed under various rules for making appointment of the persons having more than two children under the notification dated 08.04.2003, is having no

application while making appointments on compassionate grounds under the Rules of 1996. As such, denial of appointment to the petitioner as Class IV employee under the Rules of 1996 is hereby declared illegal. The petitioner is entitled to be recruited as Class IV employee.

This petition for writ, hence is allowed. A directions is given to the respondents to give appointment to the petitioner as a Class IV employee within a period of three months from today.

(GOVIND MATHUR)J.

Anil/